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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. FRANK ERNEST GUTIERREZ, Defendant and Appellant.	E068881 (Super.Ct.No. RIF1503686) OPINION

APPEAL from the Superior Court of Riverside County. David A. Gunn, Judge. Affirmed.

Ami Sheth Sagel, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Michael Pulos and Teresa Torreblanca, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

Defendant and appellant Frank Ernest Gutierrez brought a motion to suppress evidence obtained during a protective sweep of his residence. The trial court partially granted defendant's motion as to a rifle found inside a case and denied the motion as to all other items found inside the residence. Thereafter, in a plea to the court, defendant pled guilty to possession of a firearm by a felon (Pen Code, § 29800, subd. (a)(1); count 2),[1] possession of ammunition by a felon (§ 30305, subd. (a); count 3), possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a); count 4), and possession of marijuana (Health & Saf. Code, § 11357, subd. (c); count 5). Defendant also admitted that he had suffered four prior prison terms (Pen. Code, § 667.5, subd. (b)) and two prior felony strike convictions (§§ 667, subds. (c) & (e)(2)(A), 1170.12, subd. (c)(2)(A)). In return, the trial court sentenced defendant to the indicated sentence of 32 months in state prison.

On appeal, defendant argues the trial court erred in denying his suppression motion as to the other items seized during the protective sweep. For the reasons explained below, we reject defendant's contention and affirm the judgment.

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[1] All future statutory references are to the Penal Code unless otherwise stated.

II

FACTUAL AND PROCEDURAL BACKGROUND[2]

At the suppression hearing, Riverside Police Department Officers Cliff Mason, Michael Cupido, and Daniel Cisneros testified as follows: On July 17, 2015,[3] officers from the Riverside Police Department conducted surveillance outside a residence in Idyllwild, California, based on their belief that a suspect, Lisa Brown, who was involved in a fatal hit-and-run vehicular manslaughter, was in the vicinity of the residence. The residence was small with an attached garage. Officer Mason conducted surveillance of the residence for two hours from an unmarked police vehicle parked on the street. During his surveillance, he observed at least three vehicles with multiple occupants come and go from the residence. Officer Mason could not see if the same number of people came and went with each vehicle, and was concerned that someone was going to try to sneak Brown out of the house and drive her out of the area. While he was watching the house, a person in the area approached his vehicle and asked Officer Mason why he was there. When Officer Mason described Brown, the person said that a female matching the description had gone into the house the night before.

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[2] The factual background is taken from the evidence presented at the hearing on defendant's motion to suppress.

[3] Officers Cliff Mason, Michael Cupido, and Daniel Cisneros testified at the suppression hearing that the date of the incident was July 19, 2015. However, according to the information, complaint, preliminary hearing, and defendant's motion to suppress, the correct date is July 17, 2015.

Thereafter, Officer Mason decided to make contact with the occupants of the residence. The officers surrounded the house, announced they were police officers, and asked the occupants to come to the front door. Officer Cupido walked to the side of the residence, banged on the windows, and announced his presence as a police officer. Officer Mason approached the front door, which was slightly ajar, pushed the door completely open, and announced his presence as a police officer. Through the opening, officers could see a marijuana cigarette on a coffee table in the living room and could smell the odor of burnt marijuana.

Defendant appeared from a back bedroom and walked outside the house to speak with the officers. The officers asked defendant whether he was on probation or parole. Defendant responded that he was not on probation or parole but that he was an "ex-con" and had been in prison in the past. Defendant also informed the officers that his friend, Brown, was inside the residence and yelled for her to come outside. Brown exited the same back bedroom and came outside. After the officers identified Brown as the suspect in the fatal hit-and-run vehicular manslaughter incident, they detained her.

In defendant's presence, Brown asked the officers if they could go inside and retrieve her personal items since she was being taken into custody. Brown noted that her belongings were in the back bedroom and in the living room. Officer Mason noted that Brown stated, "'Can you go in and get my purse? I have some personal items inside the house. Can you go in and retrieve those and bring them?'" The officers agreed to do so. However, because the officers did not know who or how many people were inside the

house, they did a "protective sweep" of the residence to ensure officer safety before they began looking for Brown's belongings.

Defendant was cooperative with the officers. The officers did not ask if there was anyone else in the home after defendant and Brown came out of the residence, nor did they have any information that there were dangerous individuals in the home. The officers did not know who lived in the home or whether defendant lived alone in the home. The officers also did not have reason to believe that Brown had weapons or drugs. The officers also did not know how many people still remained in the home.

Officers Cisneros, Cupido, and Mason conducted the protective sweep of the residence. The officers checked all areas where a person could be hiding. Officer Cupido testified that they conducted a systematic search to "make sure there was nobody standing over" an unseen corner or "hiding" inside the residence, first searching to the left where there was a living or dining room. The officers also swept through "the bedroom and cleared the bedroom, then the kitchen, and then the garage."

In the back bedroom, where Brown's purse was located, Officer Cisneros found in plain view a rifle and a rifle case. Officer Cisneros opened the rifle case and found a second rifle inside the case. Both rifles were not loaded. Officer Cisneros found an ashtray on a shelf that appeared to contain methamphetamine and two glass pipes next to it. Officer Cisneros also saw a scale and some razor blades on a small table in the back bedroom in plain sight. In addition, Officer Cisneros found a padlocked box on a shelf in the bedroom. Officer Cisneros asked defendant what was in the locked box, and

defendant replied that the box contained old recipes and gave the officer consent to open the box. Defendant told the officers where the key was and the officers unlocked the box and found ammunition inside the locked box.[4] In the living room, where Brown's clothing and other personal items were located, officers found additional methamphetamine on top of the coffee table and marijuana in a clear box underneath the coffee table.

Defendant was arrested and taken to a police station. At the police station, officers found methamphetamine in defendant's shoe and on the floor near where defendant had been seated in the booking area.

Following testimony, the trial court heard argument from both counsel. Defense counsel argued the protective sweep was not justified because there were no facts supporting the officers' suspicion that a dangerous person was inside the residence. The prosecutor asserted that the protective sweep was justified to ensure officer safety because Brown had asked the officers to enter the residence to retrieve her items and because multiple people had been seen coming and going from the house.

The trial court granted defendant's suppression motion as to the rifle found in the case, but denied defendant's motion as to all of the other items found in the residence. The court explained, "the testimony was that Ms. Brown, upon exiting, asked the police

[4] Defense counsel objected to Officer Cisneros's testimony concerning the locked box, arguing the officers elicited defendant's information and consent without informing defendant of his constitutional rights pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436. The trial court ruled that while defendant was in a custodial situation, the officer's question as to what was in the locked box did not constitute an interrogation.

to go into the house to look for her property. I think that was a consensual entry into the house by a co-occupant; therefore, you could argue, I think rather strongly, that there wasn't a Fourth Amendment violation by the entry into the house." The court further noted, "And I think that to go into the house and get the property for Brown was a legitimate governmental entry, so my conclusion is that the officers were permitted in the Fourth Amendment analysis to enter the house and to do a reasonable quick check to see if anybody was dangerous in the house in the facts of this case; however, that scope can be exceeded, and I think it was in certain respects in this case." The court denied defendant's suppression motion as to all the items found in plain view, and granted the motion as to the rifle found inside the case, noting the officer opening the case exceeded the scope of the protective sweep. As to the ammunition found in the locked box, the court concluded that defendant gave consent to open the locked box.[5]

III

DISCUSSION

Defendant argues the trial court improperly denied his motion to suppress evidence because (1) the officers lacked consent to enter his residence, and (2) the protective sweep was not justified as there were no facts to support the officers' suspicion that there could be dangerous individuals inside the house. For the reasons explained below, we reject these contentions, and affirm the judgment.

[5] We note that defendant's suppression motion did not specifically list the ammunition found inside the locked box.

A. *Search and Seizure Generally and Standard of Review*

"The Fourth Amendment to the federal Constitution guarantees against unreasonable searches and seizures by law enforcement and other government officials." (*People v. Parson* (2008) 44 Cal.4th 332, 345.) "'It is a "basic principle of Fourth Amendment law" that searches and seizures inside a home without a warrant are presumptively unreasonable.'" (*People v. Thompson* (2006) 38 Cal.4th 811, 817, quoting *Payton v. New York* (1980) 445 U.S. 573, 586.) When police conduct a search or seizure without a warrant, the prosecution has the burden of showing the officers' actions were justified by an exception to the warrant requirement. (*People v. Redd* (2010) 48 Cal.4th 691, 719; *People v. Camacho* (2000) 23 Cal.4th 824, 830; *People v. Chavez* (2008) 161 Cal.App.4th 1493, 1499.)

One such exception is consent. (*Illinois v. Rodriguez* (1990) 497 U.S. 177, 181 (*Rodriguez*); *People v. James* (1977) 19 Cal.3d 99, 106.) A person who possesses common authority over a residence may consent to police entry to conduct an arrest or search of the residence. (*United States v. Matlock* (1974) 415 U.S. 164, 170; *People v. Oldham* (2000) 81 Cal.App.4th 1, 9.) "[I]t is settled that 'the consent of one who possesses common authority over premises or effects is valid as against the absent, nonconsenting person with whom that authority is shared.'" (*People v. Jenkins* (2000) 22 Cal.4th 900, 976-977 (*Jenkins*), quoting *Matlock*, at p. 170.) "A defendant has the burden at trial of establishing a legitimate expectation of privacy in the place searched or the thing seized. [Citations.] The prosecution has the burden of establishing the

reasonableness of a warrantless search. [Citations.] The state may carry its burden of demonstrating the reasonableness of a search by demonstrating that the officer conducting the search had a reasonable belief that the person consenting to the search had authority to do so; it is not required that the state establish that the person consenting to the search had actual authority to consent. [Citations.]" (*Jenkins*, at p. 972; *Oldham*, at p. 10 [even if the consenting occupant actually lacks authority to consent, officers may rely on his or her apparent authority].)

Another recognized exception to the warrant requirement for searches and seizures is the "'protective sweep'" exception. (*Maryland v. Buie* (1990) 494 U.S. 325, 327 (*Buie*); *People v. Seaton* (2001) 26 Cal.4th 598, 632.) The Fourth Amendment permits a protective sweep if the searching officer "'possessed a reasonable belief based on "specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warranted" the officer in believing,' [citation], that the area swept harbored an individual posing a danger to the officer or others." (*Buie*, at p. 327; accord, *People v. Ormonde* (2006) 143 Cal.App.4th 282, 292.) A protective sweep may not be based on "a mere 'inchoate and unparticularized suspicion or "hunch."'" (*Buie*, at p. 332.) Officers conducting a protective sweep who see an item in plain view, which they have probable cause to believe is evidence of a crime or contraband, may lawfully seize it without a warrant. (*Id*. at p. 330; *Arizona v. Hicks* (1987) 480 U.S. 321, 325-327; *People v. Clark* (1989) 212 Cal.App.3d 1233, 1238-1239.)

Under the reasonable suspicion standard, courts must evaluate the totality of circumstances on a case-by-case basis, allowing the officers on the scene to draw on their own experience and training to make inferences from and deductions about the cumulative information available to them. (*United States v. Arvizu* (2002) 534 U.S. 266, 273-274 (*Arvizu*); *People v. Ledesma* (2003) 106 Cal.App.4th 857, 863 (*Ledesma*).)

"The standard of appellate review of a trial court's ruling on a motion to suppress is well settled. We view the record in the light most favorable to the trial court's ruling and defer to its findings of historical fact, whether express or implied, if they are supported by substantial evidence. We then decide for ourselves what legal principles are relevant, independently apply them to the historical facts, and determine as a matter of law whether there has been an unreasonable search and/or seizure." (*People v. Knight* (2004) 121 Cal.App.4th 1568, 1572; accord, *People v. Lenart* (2004) 32 Cal.4th 1107, 1119; *People v. Ayala* (2000) 23 Cal.4th 225, 255.)

B. *Consent to Enter Home*

Defendant argues that the officers did not have lawful consent to enter the residence because the People presented no evidence that defendant had given Brown express authority to consent or that the officers had a reasonable basis to believe Brown had the authority to consent to a warrantless entry into the home.

Valid consent may be given by (1) the person whose property or place is searched, (2) a third party who possesses common authority over that property or place, or (3) a third party who the police reasonably believe has such common authority. (*People v.*

Superior Court (*Walker*) (2006) 143 Cal.App.4th 1183, 1198-1199 (*Walker*); *People v. Baker* (2008) 164 Cal.App.4th 1152, 1158-1159; *People v. Boyer* (2006) 38 Cal.4th 412, 445.) "[W]here the facts available to the officer at the time of the search would lead a reasonable person to believe 'that the consenting party had authority over the premises [or property]' [citation], the search is valid even if it ultimately turns out that no actual authority to consent existed." (*Walker*, at p. 1205.) Put differently, "[t]he law . . . permits a search based upon consent by a person with apparent authority where the officers conducting the search reasonably believe that the person is empowered to give that consent." (*Id*. at p. 1199; see *Rodriguez, supra*, 497 U.S. at p. 186 [warrantless search based upon consent of third party is valid where police reasonably believe the consenting party has authority over the premises]; *Jenkins, supra*, 22 Cal.4th at p. 972.) "The sanctity of the home is not threatened when police approach a residence, converse with the homeowner, and properly obtain consent to search. The Fourth Amendment's prohibition against warrantless searches of homes does not apply when voluntary consent to the search has been given by someone authorized to do so." (*People v. Rivera* (2007) 41 Cal.4th 304, 311.)

Nothing in this record indicates to us that the consent Brown gave to the officers was other than voluntary. The evidence also demonstrates that Brown at least appeared to the officers to have authority to agree to enter the residence. In other words, even if Brown did not have actual authority to consent to enter the residence, it was reasonable for the officers to believe she had apparent authority. Brown's conduct was consistent

with a person who shared the premises or possessed common authority over it. The evidence established at the suppression hearing showed that Brown was in the back bedroom when the officers arrived. The officers were also informed by a citizen who lived in the area that Brown had entered the house the night before. Furthermore, Brown informed the officers that her belongings were inside the house and asked the officers to retrieve her clothes and purse from two different areas of the home. The officers located Brown's belongings from the back bedroom where defendant was also seen exiting, and from the living room area. The presence of Brown's personal belongings in multiple rooms bolstered the reasonableness of the officers' belief that Brown was a co-occupant with lawful access to both the living room area and the bedroom. Moreover, defendant was present and did not object when Brown asked the officers to enter the house and retrieve her belongings. (See *U.S. v. Hilliard* (8th Cir. 2007) 490 F.3d 635, 639-640 (*Hilliard*) [no constitutional violation where occupant with common authority over searched area, who was present at time of search, failed to object].) At the suppression hearing, defendant had the opportunity to clarify that Brown did not live in his house but failed to do so. Brown also did not ask defendant's permission prior to asking the officers to enter the house and retrieve her belongings.

In addition, there were no indications that Brown did not have authority to consent to the officers entering the house. The officers were unaware who lived at the house and how many people lived there. Moreover, they did not know the relationship between Brown and defendant (and reasonably believed that Brown might be defendant's

girlfriend or wife). The officers were not required to make further inquiry on the matter. (See *Georgia v. Randolph* (2006) 547 U.S. 103, 122 (*Randolph*) [To require an officer to take additional steps to confirm the authority of a consenting individual whom the officer reasonably believes has apparent authority would be unnecessary and impractical.].)

In *Rodriguez, supra*, 497 U.S. 177, the defendant's girlfriend, who had not lived at the residence which was the subject of the search for several months, volunteered to take law enforcement officers to what she called "'our'" apartment so they could arrest the defendant for assaulting her. (*Id.* at p. 179.) The law enforcement officers did not inquire as to whether the girlfriend still resided there, but instead followed her to the apartment, at which time she gave them permission to enter and they then arrested the defendant. (*Id*. at p. 180.) The Supreme Court ruled the evidence seized did not have to be suppressed because the police reasonably, even though incorrectly, believed that the girlfriend had authority to consent to entry and search of the premises. (*Id*. at pp. 185-186.) Here, given the totality of the circumstances in this case, the trial court could conclude that the officers' belief Brown had authority to consent to the entry of the residence was reasonable.

Defendant relies on *U.S. v. Chavez* (9th Cir. 2016) 673 Fed.Appx. 754 (*Chavez*), a Ninth Circuit case, which reversed a district court's denial of a motion to suppress based on apparent authority. (*Id*. at pp. 756-757.) *Chavez* is, however, distinguishable from the present case. In *Chavez*, the law enforcement officers had considerably more information about the third party and the occupants who lived in the home than what was available to

the officers in the instant case. In that case, the officers knew that the third party, who was the mother of the defendant's roommate, did not own or reside at the home and that she was just visiting from out of town. (*Id*. at pp. 756-757.) The officers in *Chavez* also knew who owned and resided at the home, and that the owner and his roommate were present inside the home at the time the third party consented. (*Ibid*.) In the present case, the officers did not know who owned the home or if Brown resided there. Furthermore, nothing indicated to the officers that Brown was merely a visitor. Rather, Brown's actions, and the information officers received from a neighbor, indicated she had common authority over the house.

Defendant argues that, similar to *Chavez*, it was unreasonable to conclude Brown had apparent authority because the officers did not know if Brown had a key to the house, whether she could enter or leave at will, whether she was ever alone in the house, how often she visited, and whether she could invite guests over. However, as discussed above, case law does not require any of this knowledge to determine apparent authority and officers are not required to make any additional inquiries if they already reasonably believe a consenting individual has apparent authority. (See *Randolph*, *supra*, 547 U.S. at p. 122; *Hilliard*, *supra*, 490 F.3d at p. 639 ["Even if the third party lacked the requisite common authority, the Fourth Amendment is not violated if the police reasonably believed the consent was valid."].)

Defendant also contends that Brown's request for officers to retrieve her personal belongings did not qualify as her consent for officers to enter the house. However, a

request that officers retrieve items from inside a house necessarily implies consent. (*U.S. v. Gilbert* (9th Cir. 1985) 774 F.2d 962, 963-964 (*Gilbert*).) For example, in *Gilbert*, the defendant was arrested wearing only shorts and a loose blouse. She asked one of the arresting officers to go to her home and get some clothing for her that she said could be found on her bed. (*Id*. at p. 963.) While collecting her clothes inside the trailer of the defendant's bedroom, the officers found drugs and drug paraphernalia in plain view. (*Ibid*.) When the defendant attempted to suppress the evidence, the Ninth Circuit Federal Court of Appeals held that "[the defendant's] request that the officers obtain her clothing necessarily implied consent to enter the bedroom in which she said the clothing was located." (*Id*. at p. 964.) Likewise, here, the court could conclude that when Brown asked the officers to retrieve her belongings, she intended for them to enter the house. Moreover, courts have inferred "'consent from the cooperative attitude of a defendant.'" (*U.S. v. Rosi* (9th Cir. 1994) 27 F.3d 409, 412; *U.S. v. Gordon* (10th Cir. 1999) 173 F.3d 761, 766 ["Non-verbal conduct, considered with other factors, can constitute voluntary consent to search"]; *U.S. v. Buettner-Janusch* (2d Cir. 1981) 646 F.2d 759, 764 ["it is well settled that consent may be inferred from an individual's words, gestures, or conduct"]; *U.S. v. Turbyfill* (8th Cir. 1975) 525 F.2d 57, 59 ["An invitation or consent to enter a house may be implied as well as expressed"].) In this case, defendant was present and cooperative with the officers when Brown asked the officers to enter the residence to retrieve her belongs.

Given the totality of the information available to officers at the time, the officers could reasonably believe that Brown was authorized to give consent to enter the residence. (*Walker*, *supra*, 143 Cal.App.4th at p. 1199; *Rodriguez, supra*, 497 U.S. at p. 186.) Accordingly, the trial court properly concluded that the officers' entry into the home was consensual.

C. *Protective Sweep*

Defendant also argues that the protective sweep of his home was unlawful because the officers did not have a valid articulable reason to conduct a protective sweep. Specifically, he asserts that the officers had no reason to enter his residence or that they had reason to believe defendant, Brown, or anyone at the residence was armed or dangerous.

In *Buie*, *supra*, 494 U.S. 325, the United States Supreme Court set out the legal standard for a protective sweep, a limited police search of premises designed to ensure officer safety. (*Id.* at p. 327.) The court noted that "the Fourth Amendment bars only unreasonable searches and seizures," and that the determination of "reasonableness" depended on a balancing of "the individual's Fourth Amendment interests against its promotion of legitimate governmental interests." (*Buie*, at p. 331.) Like a *Terry* stop and frisk (*Terry v. Ohio* (1968) 392 U.S. 1), and the preventative search of an automobile for weapons during a roadside encounter (*Michigan v. Long* (1983) 463 U.S. 1032), a protective sweep may be justified even though an officer lacks both a warrant and probable cause to believe that officer safety is threatened. The court stated the following

"reasonable suspicion" standard: "[W]e hold that there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene." (*Buie*, at p. 334.) The court concluded that "the reasonable suspicion standard . . . strikes the proper balance between officer safety and citizen privacy." (*Id*. at p. 334, fn. 2.)

The high court has repeatedly held that in determining the existence of reasonable suspicion, courts must evaluate the "'totality of the circumstances'" on a case-by-case basis to determine whether the officer has "a 'particularized and objective basis'" for his or her suspicion. (*Arvizu*, *supra*, 534 U.S. at p. 273.) The court has emphasized the importance of allowing the officers on the scene "to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.' [Citations.]" (*Ibid*.) In addition, the court has been sharply critical of lower court decisions precluding police reliance on facts consistent with an innocent as well as a guilty explanation. (*Id*. at p. 274.) The court has cautioned against restricting the range of facts considered in the calculus of reasonable suspicion. (*Id*. at p. 273; *Ornelas v. United States* (1996) 517 U.S. 690, 695-696.) It has embraced the notion that "reasonable suspicion" is an abstract concept, not a "'finely-tuned [standard]'" (*Ornelas*, at p. 696; accord, *United States v. Cortez* (1981) 449 U.S. 411, 417) and deliberately avoided encumbering its determination with a "'neat set of legal rules.'" (*Ornelas*, at pp. 695-696, quoting *Illinois v. Gates*

(1983) 462 U.S. 213, 232; *United States v. Sokolow* (1989) 490 U.S. 1, 7-8.) Finally, the court has warned lower courts to avoid the "unrealistic second-guessing" of police officers acting "in a swiftly developing situation. . . . [Citation.] A creative judge engaged in post hoc evaluation of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished. . . . [Citations.] The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or pursue it." (*United States v. Sharpe* (1985) 470 U.S. 675, 686-687, italics omitted.)

The same principles apply when an officer enters a residence with the consent of a resident or co-resident and when the legality of a search is not predicated on an arrest. One court has held that if police officers are lawfully in a residence pursuant to the occupant's consent, the officers "were 'permit[ted to conduct] a protective search of part or all of the residence [if] the officers reasonably believe[d] that there might be other persons on the premises who could pose some danger to them.'" (*Gilbert, supra*, 774 F.2d at p. 964.)

Applying the *Buie* standard to the "reasonable suspicion" principles just discussed, we conclude the protective sweep conducted in this case was justified. The officers lawfully entered defendant's residence with Brown's consent. Brown asked the officers to retrieve her belongings, which were located in the back bedroom and living room. Based on the totality of the circumstances, once the officers entered the home, they were entitled to conduct a protective sweep of the residence for officer safety. Before the

officers entered the house, Officer Mason, who had been surveilling the home for about two hours, had observed several vehicles filled with multiple people come and go from the residence. Officer Mason could not determine from his vantage point if the same number of people who entered the house left with each vehicle. Officer Mason testified that he "had no idea who was inside the house" but suspected people were inside based on his observations of watching "multiple vehicles containing multiple subjects come and go from that residence." Based on Officer Mason's observations, the officers' "mindset was always that there were multiple people inside." The totality of the circumstances gave the officers reasonable suspicion to believe that the residence harbored one or more persons who might have posed a threat. Moreover, before the officers entered the home, Officer Mason was aware that defendant was an "ex-con" and that Brown was a homicide suspect who had fled the scene of a fatal hit-and-run. It was reasonable for the officers to believe that any associate of a felon or a homicide suspect could potentially be dangerous.

Officer Mason's belief that people remained in the home justified a reasonable suspicion by a prudent officer that others were present. This distinguishes our case from those in which the police attempt to rely on the absence of specific information to justify the theoretical possibility that someone is inside. Where an officer has no information about the presence of dangerous individuals, the courts have consistently refused to permit this lack of information to support finding of a "possibility" of peril justifying a sweep. (*U.S. v. Chaves* (11th Cir. 1999) 169 F.3d 687, 692 ["[I]n the absence of specific

and articulable facts showing that another individual, who posed a danger to the officers or others, was inside the warehouse, the officer's lack of information cannot justify the warrantless sweep in this case. [Citations.]"]; *U.S. v. Colbert* (6th Cir. 1996) 76 F.3d 773, 777-778 ["Officer Hawes testified that he 'didn't have any information at all' when asked whether he had information that anyone was inside the Lewis apartment prior to his decision to conduct the protective sweep. . . . 'No information' cannot be an articulable basis for a sweep that requires information to justify it in the first place."].)

Officer Mason's observations of defendant's residence while he was surveilling the home for approximately two hours provided Officer Mason and his partners with a reasonable, not simply a theoretical, possibility that others were present inside. Based on the totality of the circumstances, we believe Officer Mason could have reasonably concluded that defendant's residence might harbor a person or persons who could cause the officers harm. (See *U.S. v. Taylor* (6th Cir. 2001) 248 F.3d 506, 513 [officer left behind to secure residence while search warrant is obtained may conduct protective sweep]; *Drohan v. Vaughn* (1st Cir. 1999) 176 F.3d 17, 22 [officers executing search warrant may conduct protective sweep]; *U.S. v. Patrick* (D.C. Cir. 1992) 959 F.2d 991, 996-997 [police may conduct protective sweep of bedroom after lessee has given consent to search other parts of apartment].) We thus conclude the protective sweep was permissible.

Defendant suggests the protective sweep was unauthorized because the officers did not articulate reasons why they were concerned for their safety. However, the officers' subjective perceptions are irrelevant when evaluating the validity of the sweep.

(*U.S. v. Hromada* (11th Cir. 1995) 49 F.3d 685, 691.) As the United States Supreme Court explained in *Scott v. United States* (1978) 436 U.S. 128, "the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify the action." (*Id*. at p. 138.) "Indeed, there are good reasons to disregard an officer's subjective intent in assessing the validity of a search or seizure." (*People v. Woods* (1999) 21 Cal.4th 668, 680.) "[E]venhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer." (*Horton v. California* (1990) 496 U.S. 128, 138.)

Defendant also repeatedly asserts that the officers had no reason to enter the residence once Brown was apprehended and that the officers were under no obligation to place themselves in harm's way to retrieve a suspect's purse or clothing. Although Officer Mason was under no obligation to enter the residence to retrieve Brown's belongings, once Officer Mason agreed to do so, Officer Mason had a reasonable suspicion others were present inside, sufficient to conduct a protective sweep of the residence. Moreover, defendant was present when Brown asked the officers to retrieve her personal belongings and neither objected to the officers entering his residence nor offered to gather Brown's belongings. Based on the totality of the circumstances in this case, once the officers were lawfully inside defendant's residence to collect Brown's purse and clothing, they were authorized to conduct a protective sweep because they had

a reasonable belief that there might be other dangerous persons on the premises. (See *Gilbert*, *supra*, 774 F.2d at p. 964.)

"'[R]easonable suspicion' is an abstract concept, not a '"finely-tuned standard[]."'" (*Ledesma*, *supra*, 106 Cal.App.4th at p. 863.) As previously noted, the United States Supreme Court has repeatedly warned that reasonable-suspicion determinations must be based on "the 'totality of the circumstances'. . . . [Citation.] This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.' [Citations.]" (*Arvizu*, *supra*, 534 U.S. at p. 273.)

Based on the foregoing, Brown's consent to enter the residence was lawful and the protective sweep was permissible. Accordingly, the trial court properly denied defendant's suppression motion as to the items found in plain view during the protective sweep and to the ammunition found in the locked box.

IV

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

RAMIREZ
P. J.

RAPHAEL
J.